

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

RANDY LEE RINDAHL, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	4:19-CV-04089-KES ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS
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Plaintiff, Randy Rindahl, moves to proceed in forma pauperis in his civil rights suit against the United States. Docket 1-1. The Prison Litigation Reform Act provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g) (emphasis added). Rindahl has previously proceeded in forma pauperis in at least three civil actions in the District of South Dakota pursuant to 42 U.S.C. § 1983 that have either been dismissed as frivolous or because of failure to state a claim. *See* Civ. 96-4117, 96-4116, and 95-4207. *See also* Civ. 09-4084, Docket 14 (denying in forma pauperis status because Rindahl had three strikes). Thus, he has at least three prior “strikes” pursuant to

28 U.S.C. § 1915(g) and is therefore ineligible to proceed in forma pauperis unless there is imminent danger of serious physical injury.

Rindahl's in forma pauperis request fails to allege that the imminent danger exception applies to him. *See* Docket 1. In order to be eligible to proceed in forma pauperis under the imminent danger exception, the prisoner must face imminent danger at the time of filing. *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998). "Allegations that the prisoner has faced imminent danger in the past are insufficient to trigger this exception to § 1915(g) and authorize the prisoner to pay the filing fee on an installment plan." *Id.* Therefore, Rindahl has failed to meet the requirements of the imminent danger exception of § 1915(g) and may not proceed in forma pauperis. Accordingly, it is:

ORDERED that Rindahl's motion to proceed in forma pauperis (Docket 1-1) is denied.

IT IS FURTHER ORDERED that Rindahl's complaint (Docket 1) is dismissed without prejudice to refiling accompanied by the entire \$350 filing fee and \$50 administrative fee.

DATED May 17, 2019.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE